

**BOARD OF ZONING APPEALS
MINUTES
JANUARY 27, 2004**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m. on January 27, 2004, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:

JAMES RUANE, JOHN ROGERS, BICKLEY FOSTER, DWIGHT GREENLEE, JAMES SKELTON, AND RANDY PHILLIPS.

The following Board member was absent:

ERMA MARKHAM

SHARON DICKGRAFE – Law Department absent.

HERB SHANER – Office of Central Inspection present.

The following Planning Department staff members were present:

DALE MILLER Secretary.

SCOTT KNEBEL Assistant Secretary.

ROSE SIMMERING, Recording Secretary.

RUANE Item #1, December 16, 2003, BZA meeting minutes.

FOSTER moves, GREENLEE seconds to approve December 16, 2003, BZA meeting minutes.

Motion Carries 6-0.

RUANE Item 2, Case No. BZA2003-66, Request a Variance to reduce parking requirement for baseball fields at the Stryker Complex on property zoned “SF-5” Single-family Residential, generally located on the northwest corner of 29th Street North and Greenwich Road. Applicant City of Wichita, %Norman Jakovac.

KNEBEL, Planning staff Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

CASE NUMBER:	BZA2003-00066
APPLICANT/AGENT:	City of Wichita c/o Norman R. Jakovac (Owner/Applicant)
REQUEST:	A variance to reduce the off-street parking requirements to 65 spaces per ball field
CURRENT ZONING:	“SF-5” Single Family
SITE SIZE:	59.67 acres
LOCATION:	North of 29th Street North and west of Greenwich

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: For athletic fields, the Unified Zoning Code (UZC) requires one parking space per three spectator seats, plus 1 space per 1,000 square feet of field area, plus 1 space per 250 square feet of office area. The applicant proposes to construct a youth baseball complex north of 29th Street North and west of Greenwich for which the UZC requires 127 parking spaces per ball field. The applicant indicates that the required parking is significantly in excess of the number of parking spaces needed, which the applicant estimates at 65 parking spaces per ball field. A variance is required to reduce the off-street parking requirement by more than 10% for newly constructed sites.

The applicant has requested a variance to reduce the parking requirement to 65 parking spaces per ball field. The applicant indicates in the attached justification that the proposed number of parking spaces per ball field is based on actual need and is supported by similar projects in other jurisdictions that require significantly fewer parking spaces than required by the UZC. Planning staff researched the parking requirements for several dozen jurisdictions, and the most common parking requirement for athletic fields is one parking space per four spectator seats, which would only require 25 parking spaces per ball field. Additionally, none of the jurisdictions researched would require as many parking spaces per ball field as proposed by the applicant. Therefore, the applicant's proposal to provide 65 parking spaces per ball field is reasonable in the opinion of planning staff.

ADJACENT ZONING AND LAND USE:

NORTH	"SF-20"	Agriculture
SOUTH	"LI"	Soccer fields
EAST	"SF-20"	Agriculture
WEST	"LI"	Airport

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the property will be developed with ball fields for youth. The UZC parking requirements are general and are intended to cover all types of athletic fields for all age groups, and in the instance of the subject property, they result in a unique situation where the subject property is required to provide significantly more parking than needed.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the applicant owns the only adjacent property at which users of the subject property might reasonably park, and the applicant has indicated that any overflow parking for the ball fields will be permitted to use the parking at the adjacent soccer fields.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as providing the code-required number of parking spaces is cost prohibitive and would limit the ability to develop a community recreational asset.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the public has an interest in providing recreational facilities for youth at a reasonable cost.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the parking requirements of the zoning regulations are not appropriate in all cases. Therefore, variances to relieve the parking requirement are permitted if proper justification is available. The zoning regulations attempt to provide sufficient parking to meet the demand of the use. The use of the property requires less than the typical number of parking spaces for an athletic field because it will be a youth baseball complex.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to reduce required off-street parking to 65 parking spaces per ball field be GRANTED, subject to the following conditions:

1. The parking requirement shall be 65 parking spaces per ball field.
2. The site shall be developed in substantial conformance with the approved site plan.
3. All parking areas shall be paved and marked.
4. The operation of ball fields on the subject property shall be limited to youth ball fields.
5. The applicant shall obtain all permits necessary to construct the improvements.
6. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

RUANE The overflow parking, if any, would go to the adjacent parking lot?

KNEBEL Yes, the only other parking in the area is this parking to the south and that is immediately across 29th Street.

RUANE Who owns that?

KNEBEL The City of Wichita.

RUANE What would be the point of access from Stryker?

KNEBEL The point of access is this entrance right here off of 29th Street, which is on the site plan.

PHILLIPS That is not the application drawing? This is the future plan?

KNEBEL Correct this is the future plan, which would be a part of this. This is the very first phase of the development, and this is the point of access to the soccer complex.

PHILLIPS How far would they have to walk to the nearest field?

KNEBEL About 500 feet.

RUANE Where is 29th Street on this site plan?

KNEBEL Shows on map.

RUANE The exception ground to the east is?

KNEBEL It is excepted out. It is not owned by the City of Wichita. It is a piece of property that is not shown, and there is no detail, so it is listed as an exception.

RUANE How would it be used?

KNEBEL Probably industrial. That is the pending zoning across the street to the east. The pending zoning to the north is industrial, so I would suspect that would be the same.

RUANE What is the number of spaces per unit for Stryker to the West Urban Fields?

KNEBEL I don't know that.

STEVE PERRY, McCluggage VanSickle & Perry, Architects, P O Box 3848, Wichita, KS 67201 The reason we wanted to look at the parking requirement is because we wanted to be able to provide the most athletic field in the project. Our consultant in Kansas City does a lot of athletic fields, and basically told us that their recommendation is 65 parking spaces per field, and that is what they have been providing in their fields in the Kansas City area. We went through the analysis as far as trying to make a logical explanation of the number of spaces we needed, and we felt like to in order to build twice as many paved parking spaces as were really needed was against the intent of the City to provide facilities for youth.

With the Strykers Complex right adjacent to it there is some overlap that we could have with the parking. Both of the facilities are not probably going to be used probably 100% at the same time, so we felt like if there was some additional need, it could be provided right next door to that. As the project is developed and more fields are built the adjacency of the parking will become a lot better as far as going across the way to the other fields. 29th Street does not go through. It won't go through. It is not a basically a street in that area. It is just access to the parking and the ball fields, so it is not like you are going to be crossing a major thoroughfare.

RUANE Do you know the answer to the question in regards to the comparison to the West Urban Fields?

PERRY I do not have the count on those parking spaces. We did not do that project. Maybe someone from the Park Department might.

RUANE Do you know if the Kansas City consultant considered that as data?

PERRY He did not look at that either. He just looked at the projects they did in Kansas City.

FOSTER What is the name of the Park itself?

PERRY At this point it is just called the Northeast Baseball Complex. It doesn't have a name that I know of.

FOSTER So if there was an overflow that it would be possible to utilize the soccer field?

PERRY The soccer field parking.

FOSTER What is the timing? Are people still playing soccer at the same time there is baseball? Do we know if there will be any conflict in timing?

PERRY There is probably some overlap of seasons, but again usually when the parking lot is full with the soccer complex is during tournaments, and those don't happen real often. I don't have any hard evidence as far as the schedule between one or other, but it is very seldom when both parking lots would be full.

FOSTER These will be lighted facilities?

PERRY Yes.

FOSTER Have you checked with the airport there. I had a problem once because a plane couldn't land because it was next to a ball field at night. Have you checked with the airport whether this would be any particular problem? Is it close enough to be of concern?

PERRY They have lighting at the soccer complex currently.

NORMAN JAKOVAC, Public Works, City of Wichita, We worked in conjunction with the Airport Authority. They did request to put shields on the lights.

FOSTER I am surprised there is not a comparison to any other parks in Wichita. These are all outside in other cities. Is there a reason for that?

PERRY Probably because the fields in Wichita we are having to go by the Zoning Ordinance and having to build the full amount of parking.

FOSTER So they have been building to the 127 category?

PERRY I don't know the answer to that, but I would assume so.

PHILLIPS The 65 per field ratio is that a number that comes from breaking down multiple ball field units like this. In other words, you looked at the total and said we have X number of fields, X number of cars and that is the ratio we came up with?

PERRY It was based on the fact that you will have 15 players per team and each of those, if they come in separate cars, there would be 30 cars for the players, 4 cars for the officials, if 1/2 of those players had someone else in their families to watch, that would be another 15 cars, so that comes up to basically 64. Well, we also added the factor if 1/2 the player for the next game came early that would be an additional 15 cars, so that comes up to a number of 64. It was based per field rather than the entire Complex.

PHILLIPS You think only 1/2 the other team and 1/2 the spectators will show up prior to the other game being finished?

PERRY That was our assumption.

ROGERS Mr. Perry, in youth sports if you take into consideration the warm up for each player before a game and since this age group is not driving age yet that their parents would have to bring each player, so I don't agree with that percentage of 1/2 the team might come early. It seems like they would all have to be there to warm up.

PERRY We felt 1/2 was a reasonable number to use. We felt 127 parking spaces was way over the amount needed. Obviously, there maybe a number between 65 and 127 spaces that is reasonable.

PHILLIPS I notice on your drawing you have two drives. You have one double loaded drive, and you have one single loaded drive. I have had some experience with baseball fields, and we have found that in most cases more that 1/2 the people, 1/2 the spectators and 1/2 the team will show up, and it looks to me that it would be very simple if you added the parking on the right side due to the two double loaded drives there you would be able to actually to lower the unit cost per stall. It seems like in a single field installation that the 65 parking spaces appears to be low.

LARRY HOETMER, Park and Recreation Department I believe the number of parking stalls that we have done other baseball complexes varies and the real answer to that is that I am not exactly sure only because most of our facilities, if not all, are older facilities. The closest one that I can make reference to would probably be the Plainview Park, which is a four diamond complex. I do not have the exact number of stalls for that facility, but I can tell you that we have four fields down there, and I don't believe that we have 260 stalls which would be the amount for this now.

The thing about this particular facility is that it is a youth facility, and we have had several discussions with Theis Doolittle, who is our consultant, and they have developed several of these facilities in the Kansas City area, and we have relied a great deal on their experience based on the dynamics of how their visitor counts work in terms of parking spaces. At this point in time we don't see this as being a tournament facility, but that is not to say on occasion, depending on how this all works out, that there may be an occasional tournament.

We are in the process of working with a group that is interested in partnering with the City of Wichita to develop this site, and their big goal is basically is youth baseball. It would be something similar to West Urban, but just a little different slant on the competitive nature of this sport and work on fundamentals and stuff. They want another outlet for youth baseball.

PHILLIPS All of your others are multiple field complexes?

HOETMER Yes, that is correct. We have a Southlake facility which is quasi-soccer and softball facility, Plainview Park which is a baseball facility, Grove Park which is a football facility which was recently developed.

PHILLIPS But as far as baseball all of them have more than one field?

HOETMER That is correct. We do have West Side athletic field.

PHILLIPS But, that is more than one field.

HOETMER That is correct.

PHILLIPS I am talking about how many other locations that you have only one field.

HOETMER We have several that have a single field in Wichita. I don't have that count with me today.

PHILLIPS I wonder what the parking count on this is compared to those other single field facilities.

HOETMER We have a number of fields in the park system that are used on a recreational basis. They are kind of pick-up games.

PHILLIPS You are putting in one baseball field in this location, and you are talking about the ratio of parking for one baseball field. How many other locations do you have that you are in charge of that has only one baseball field in it and associated parking?

HOETMER I know we have one baseball/softball field at North-Woodland. There is one at McAdams/Atwater Recreation facility. I think it comes down to a function of programming.

PHILLIPS I am asking for comparable parking ratios in single field facilities.

HOETMER I do not have that information with me.

FOSTER We see a lot of interest in the YMCA facilities. Do they have any baseball facilities?

HOETMER I am not familiar with their counts, but I do believe the east facility off of Douglas has one or two fields.

RUANE With regard to the new YMCA on east Douglas, this Board did approve a significant variance which was one of the decisions we made which was not good because it is a disaster. There is not a third of the parking that is necessary, and it is a very dangerous situation. Because buses house there and your vision is impaired. It is younger children, and we made a big mistake.

FOSTER I am concerned about the overflow. 500 feet seemed a pretty good distance.

PHILLIPS I am actually scaling it at greater than 600 feet. From the entry to the Stryker Complex to the stands.

FOSTER If we were asked to approve an off-premises parking lot, 600 feet might seem like a long distance. If this is approved, and I don't think it should be, I would reword Condition #1.

PHILLIPS Could we hear from the applicant. I am not going to agree to this application. If they can add the additional parking which is very economical I might go with that. It would put it at 85 cars, which is a better ratio. I think 65 spaces is inadequate.

SKELTON I am going to echo that sentiment expressed by Mr. Phillips.

PERRY We would amend our application to 85 spaces.

PHILLIPS It would be utilizing all the drives on a double-loaded basis. It is too small, so people who don't find parking, they are not going to walk across the street they are going to pull off the drive and park in the grass exactly where that is located.

FOSTER I think we need to know what is happening locally. If this application were to pass, I would suggest it be worded that the parking requirement shall be a minimum of 85 spaces per ball field and not just a set amount. So if they want more at a future time, they couldn't do it the way that it is written now.

ROGERS Are we actually locking in the requirement for parking for the rest of the ball fields no matter what age groups they might be, even adult in the future expansion of the park?

KNEBEL One of the Conditions of Approval would be that it be a youth baseball complex, Condition #4, but yes this would be a Variance that would lock in the parking requirement for future expansion as well.

PHILLIPS MOVES SKELTON SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT THE SECRETARY'S REPORT EXCEPT THAT ITEMS #1 AND #2 BE AMENDED TO READ:

- 1. The parking requirement shall be a minimum of 85 parking spaces per ball field.**

2. **The site shall be developed in substantial conformance with the an amended site plan that contains two double-loaded parking fields for the first ball field.**

FOSTER You are assuming they are going to use the area along the roadway?

PHILLIPS No, there is a single loaded drive and compare that to the long-range plan, there are three rows of parking and that leaves one double loaded parking drive and one single loaded, and all they have to do is apply the parking stalls on the opposite side of the single loaded drive. They have actually made their parking more efficient, and that will lower the unit cost per stall.

FOSTER What does single loaded drive mean?

PHILLIPS If you have a drive or roadway with parking on one side that means it is single loading.

FOSTER I just wonder if that is a safe way to design a public park. I am going to vote against the motion because I think the applicant needs to have more study of this project.

RUANE I also do not understand the double loaded drive.

PHILLIPS It means you have parking on both sides of the drive. The western drive has parking on both sides the eastern one has parking on one side.

RUANE As you look at the second conditions do you want to reference the amended site plan to indicate the double loaded plan?

PHILLIPS Yes, that was the intent of the motion.

SKELTON I agree.

Motion carries 4-2, RUANE and FOSTER opposed. The Board adopts the following resolution:

BZA RESOLUTION NO. 2003-00066

WHEREAS, City of Wichita c/o Norman R. Jakovac (owner/applicant); pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the off-street parking requirements to 65 spaces per ball field on property zoned "SF-5" Single-family Residential legally described as follows:

The South Half of the Southeast Quarter of Section 33, Township 26 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, except beginning 60 feet north of the Southeast corner, thence West 772 feet, thence North 1207.31 feet, thence East 772 feet, South 1208.04 feet to beginning, except Regency Park Addition and Except the East 50 feet for road. Generally located north of 29th Street North and west of Greenwich.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of January 27, 2004, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique inasmuch as the property will be developed with ball fields for youth. The UZC parking requirements are general and are intended to cover all types of athletic fields for all age groups, and in the instance of the subject property, they result in a unique situation where the subject property is required to provide significantly more parking than needed.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the applicant owns the only adjacent property at which users of the subject property might reasonably park, and the applicant has indicated that any overflow parking for the ball fields will be permitted to use the parking at the adjacent soccer fields.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as providing the code-required number of parking spaces is cost prohibitive and would limit the ability to develop a community recreational asset.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as the public has an interest in providing recreational facilities for youth at a reasonable cost.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the parking requirements of the zoning regulations are not appropriate in all cases. Therefore, variances to relieve the parking requirement are permitted if proper justification is available. The zoning regulations attempt to provide sufficient parking to meet the demand of the use. The use of the property requires less than the typical number of parking spaces for an athletic field because it will be a youth baseball complex.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance be granted to reduce the off-street parking requirements to 65 spaces per ball field on property zoned “SF-5” Single-family Residential and legally described as follows:

The South Half of the Southeast Quarter of Section 33, Township 26 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, except beginning 60 feet north of the Southeast corner, thence West 772 feet, thence North 1207.31 feet, thence East 772 feet, South 1208.04 feet to beginning, except Regency Park Addition and Except the East 50 feet for road. Generally located north of 29th Street North and west of Greenwich.

The variance is hereby GRANTED, subject to the following conditions:

1. The parking requirement shall be a minimum of 85 parking spaces per ball field.
2. The site shall be developed in substantial conformance with the an amended site plan that contains two double-loaded parking fields for the first ball field.
3. All parking areas shall be paved and marked.
4. The operation of ball fields on the subject property shall be limited to youth ball fields.
5. The applicant shall obtain all permits necessary to construct the improvements.
6. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 27th DAY of JANUARY, 2004.

RUANE Item 3, Case No. BZA2003-69, Request a Variance to allow an off-site sign to be located closer than 660 feet from the Arkansas River, generally located north of MacArthur and east of I-135. Applicant, Ralph Shaver, and Bralton Outdoor Advertising. Agent, Ferris Consulting, %Greg Ferris.

KNEBEL, Planning staff Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

CASE NUMBER: BZA2003-00069
OWNER/APPLICANT: Ralph and Cheryl Shaver (Owner); Bralton Outdoor Advertising c/o Jeff Cowan (Applicant)
AGENT: Ferris Consulting c/o Greg Ferris
REQUEST: Variance to Section 24.04.200(g) of the Sign Code to permit an off-site sign to be located within 414 feet of the Arkansas River
CURRENT ZONING: "GC" General Commercial
SITE SIZE: 2.22 Acres
LOCATION: North of MacArthur and east of I-135

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant is requesting a variance to Section 24.04.200(g) of the Sign Code to permit an existing off-site sign (billboard) to remain located within 414 feet of the Arkansas River. The subject property is located north of MacArthur and east of I-135 at 1002 E. MacArthur. The subject property is zoned "GC" General Commercial and is used as an outdoor storage facility.

The applicant received a permit from the Office of Central Inspection in October 2002 to construct a 14-foot by 48-foot billboard on the western edge of the subject property that faces the direction of travel along I-135. Section 24.04.200(g) of the Sign Code prohibits billboards within 660 feet of the bank line of the Arkansas River, which borders the northern edge of the subject; however, the billboard is located only 414 feet from the bank line of the Arkansas River. Also, Section 24.04.222.3.d. prohibits a billboard within 330 feet of another billboard, and the nearest billboard is located 294 feet south of the point on the subject property that is 660 feet from the bank line of the Arkansas River. Therefore, the Sign Code does not permit a billboard on the subject property, and the permit for the billboard should not have been issued. The applicant has requested a variance to allow the existing billboard to remain located within 414 feet of the Arkansas River. The applicant submitted the attached justification outlining how the request meets the criteria for the granting of a variance.

ADJACENT ZONING AND LAND USE:

NORTH	R.O.W.	Arkansas River
SOUTH	“B“	Mobile home park
EAST	“GC”	Warehousing, mini-storage
WEST	R.O.W.	I-135

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the property is developed with a billboard for which a permit was erroneously issued, and the property would otherwise be permitted a billboard where it not for the code section from which the variance is requested.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as numerous billboards are located in the general vicinity without any noticeable detrimental impacts on adjacent properties.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as requiring the billboard to be removed will result in significant expense and lost of income to the applicant without any corresponding benefit to the public good.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as billboard signs are common along freeway frontages and in this general vicinity, and the proposed billboard meets all Sign Code requirements except for the required separation from the Arkansas River. Since there are no public improvements along the river in this vicinity and the view of the billboard from the river corridor is extremely limited, the principles of public interest will not be adversely impacted by granting the variance.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as a stated intent of the Sign Code is to provide an opportunity to achieve a reasonable balance between the need for a sign and preserving the visual qualities of the community. In this instance, the need for not removing an erroneously permitted billboard will provide a reasonable balance with the visual qualities of the community.

RECOMMENDATION: It is staff’s opinion that the variance requested is appropriate. Should the Board determine that the five conditions necessary for granting the variance exist, then it is the recommendation of the Secretary that the variance be GRANTED, subject to the following conditions:

1. The off-site sign shall comply with all regulations of the Sign Code, except that it shall be permitted on the subject property a minimum of 414 feet from the bank line of the Arkansas River.
2. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

PHILLIPS This diagram where you measure the distances, measuring a distance along a curve like that is that a formula that is applied through the Sign Code? I am perplexed how do you come up with the 294? I see the angles there but that is not typically to the way it is done.

KNEBEL You are right as far as measuring along this curve here. I think the 294 is an estimate of the actual distance. Obviously if it is an arch then you have a greater distance in there. It is just to show that it is not 330 feet.

PHILLIPS But if you measure it properly it could be. Because it looks like you are within 10% and you could be in 10% error there.

KNEBEL I will let the applicant explain how he determined that number and measured it.

PHILLIPS I am not talking about the curvature of the road there, but when you measure points along a arch they typically find the radius point. You might be off 30 feet.

KNEBEL You mean this point would need to be directly across from the location of the sign.

PHILLIPS That point is not directly across.

KNEBEL What would happen if this point was 330 feet from this point as measured along this curve of centerline of the highway then a billboard would be permitted at that point since it was 660 feet.

SKELTON I would like a brief explanation how this mistake was made to begin with?

KNEBEL I think probably because the Sign Code has an off-site sign regulation section, and this particular requirement is not in that section. It is in a general sign regulation section. There is a list of general prohibited locations for signs, and in that general section is that one restriction that pertains only to off-site signs, and I think it was a lack of knowledge by the person who issued the permit.

GREG FERRIS The Sign Code is very specific on how to measure it, and you measure at 90 degree angles, and you don't find the distances the way that you normally would, so if you look at the Sign Code, this is the way that you would measure it. You take a point 90 degrees from the centerline and then you go to another point that is 90 degrees from the centerline so those create your distances. So you don't follow the arch as you would normally. They measure only in the form of a 90 degree from the centerline. This is how the Sign Code requires you to measure it. This distance is probably within a foot or two.

SKELTON How was this mistake made in the first place?

FERRIS The applicant made the application in good faith based on what Mr. Knebel's comments were in relation to the Sign Code. If you have ever looked at the Sign Code, it can be confusing. If you go to the provision of the off-site sign and read what is prohibited there is no prohibition. In fact the City Council has agreed that was confusing because in the new draft they have now changed it so that it is now reflected in both sections. I don't know why Central Inspection made a mistake. You are not setting a precedent. They have changed the policy in OCI now, and when you make a sign application they have a different approach of how these are approved.

FOSTER MOVES PHILLIPS SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT THE SECRETARY'S REPORT.

Motion carries 6-0. The Board adopts the following resolution:

BZA RESOLUTION NO. 2003-00069

WHEREAS, Ralph and Cheryl Shaver (Owner); Bralton Outdoor Advertising, %Jeff Cowan (Applicant); Ferris Consulting, %Greg Ferris (Agent) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to Section 24.04.200 (g) of the Sign Code to permit an off-site sign to be located within 414 feet of the Arkansas River on property zoned "GC" General Commercial legally described as follows:

Lot 1, Shaver 2nd Addition, Wichita, Sedgwick County, Kansas. Generally located north of MacArthur and east of I-135.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of January 27, 2004, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the property is developed with a billboard for which a permit was erroneously issued, and the property would otherwise be permitted a billboard where it not for the code section from which the variance is requested.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as numerous billboards are located in the general vicinity without any noticeable detrimental impacts on adjacent properties.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as requiring the billboard to be removed will result in significant expense and lost of income to the applicant without any corresponding benefit to the public good.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as billboard signs are common along freeway frontages and in this general vicinity, and the proposed billboard meets all Sign Code requirements except for the required separation from the Arkansas River. Since there are no public improvements along the river in this vicinity and the view of the billboard from the river corridor is extremely limited, the principles of public interest will not be adversely impacted by granting the variance.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as a stated intent of the Sign Code is to provide an opportunity to achieve a reasonable balance between the need for a sign and preserving the visual qualities of the community. In this instance, the

need for not removing an erroneously permitted billboard will provide a reasonable balance with the visual qualities of the community.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance be granted to Section 24.04.200 (g) of the Sign Code to permit an off-site sign to be located within 414 feet of the Arkansas River on property zoned "GC" General Commercial and legally described as follows:

Lot 1, Shaver 2nd Addition, Wichita, Sedgwick County, Kansas. Generally located north of MacArthur and east of I-135.

The variance is hereby GRANTED, subject to the following conditions:

1. The off-site sign shall comply with all regulations of the Sign Code, except that it shall be permitted on the subject property a minimum of 414 feet from the bank line of the Arkansas River.
2. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 27th DAY of JANUARY, 2004.

RUANE Item 4, Report from Central Inspection regarding compliance with requirements of various cases.

HERB SHANER I have no report today.

MILLER I just thought I'd mention for the benefit of the Board that the Zoning Code does allow for parking lots to be located 600 feet away from the point at which they are to be used for future reference.

MEETING ADJOURNED at 2:30 p.m.